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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

MARY HJELM,

Plaintiff,

v.

ASSET ACCEPTANCE, LLC;
SUTTELL & ASSOCIATES, P.S.;
ISSAC HAMMER, and JANE DOE
HAMMER, husband and wife.

Defendants.

Case No.:

COMPLAINT

[FDCPA]

Plaintiff Mary Hjelm, suing on her behalf, by and through their attorney,
Michael D. Kinkley of Michael D. Kinkley, P.S., alleges the following:

I. COMPLAINT

1.1. This is an action for damages and remedies against Asset Acceptance, LLC; Suttell & Associates, P.S.; and Isaac Hammer and Jane Doe Hammer, husband and wife, (collectively “Defendants”) pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”); and for damages and remedies against Asset Acceptance,

1 LLC, pursuant to the State of Washington Collection Agency Act, RCW
2 19.16, (“WCAA”); for damages and remedies pursuant to the
3 Washington State Consumer Protection Act (RCW 19.86 et seq.)
4 (“WCPA”).
5

6 II. JURISDICTION & VENUE

- 7
8 2.1. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d), 28 U.S.C.
9 §1337, and 28 U.S.C. §1331. Supplemental jurisdiction exists for state
10 law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available
11 pursuant to 28 U.S.C. §2201 and §2202.
12
13 2.2. Venue is proper in this District under 28 U.S.C. §1391(b) because the
14 Defendants conduct affairs and transact business in this District, and a
15 significant portion of the unlawful acts giving rise to this Complaint
16 occurred in this District, and the plaintiffs reside within the territorial
17 jurisdiction of the court.
18

19 III. FEDERAL QUESTION 20 SUBJECT MATTER JURISDICTION

- 21 3.1. Plaintiff Mary Hjelm is a “consumer” as defined by the FDCPA, 15
22 U.S.C. §1692a(3). She is an individual.
23
24 3.2. Plaintiff Mary Hjelm is a natural person.
25

1 3.3. Defendant Asset Acceptance, LLC, was attempting to collect a “debt” as
2 defined by FDCPA, 15 U.S.C. §1692a(5).

3
4 3.4. The alleged debt was an alleged obligation of plaintiff to pay money
5 arising out of a transaction primarily for personal, family, or household
6 purposes.

7
8 3.5. All charges defendants alleged that Plaintiff Hjelm owed were for
9 personal purposes.

10 3.6. Defendant Asset Acceptance, LLC is a “debt collector” as defined by the
11 FDCPA, 15 U.S.C. §1692a(6).

12
13 3.7. Defendant Asset Acceptance, LLC regularly uses interstate commerce or
14 the mails for the collection of debts.

15 3.8. The principle purpose of Asset Acceptance, LLC’s business is the
16 collection of debts.

17
18 3.9. Defendant Asset Acceptance, LLC regularly collects or attempts to
19 collect, directly or indirectly, debts owed or due or asserted to be owed or
20 due another using the telephone and mail.

21
22 3.10. Defendant Suttell & Associates, P.S. was attempting to collect a “debt”
23 as defined by FDCPA, 15 U.S.C. §1692a(5).

1 3.11. The alleged debt was an alleged obligation of plaintiff to pay money
2 arising out of a transaction primarily for personal, family, or household
3 purposes.
4

5 3.12. All charges defendants alleged that Plaintiff Hjelm owed were for
6 personal purposes.
7

8 3.13. Defendant Suttell & Associates, P.S. is a “debt collector” as defined by
9 the FDCPA, 15 U.S.C. §1692a(6).
10

11 3.14. Defendant Suttell & Associates, P.S. regularly uses interstate commerce
12 or the mails for the collection of debts.
13

14 3.15. Defendant Suttell & Associates, P.S. regularly collects or attempts to
15 collect, directly or indirectly, debts owed or due or asserted to be owed or
16 due another using the telephone and mail.
17

18 3.16. Defendant Isaac Hammer was attempting to collect a “debt” as defined
19 by FDCPA, 15 U.S.C. §1692a(5).
20

21 3.17. The alleged debt was an alleged obligation of plaintiff to pay money
22 arising out of a transaction primarily for personal, family, or household
23 purposes.
24

25 3.18. All charges defendants alleged that Plaintiff Hjelm owed were for
personal purposes.

1 3.19. Defendant Isaac Hammer is a “debt collector” as defined by the FDCPA,
2 15 U.S.C. §1692a(6).

3
4 3.20. Defendant Isaac Hammer regularly uses interstate commerce or the mails
5 for the collection of debts.

6 3.21. Defendant Isaac Hammer regularly collects or attempts to collect,
7 directly or indirectly, debts owed or due or asserted to be owed or due
8 another using the telephone and mail.

9
10 3.22. Defendant Asset Acceptance, LLC is a “collection agency” as defined by
11 RCW 19.16.100(2).

12
13 3.23. Defendant Asset Acceptance, LLC, solicits claims for collection.

14 3.24. Defendant Asset Acceptance, LLC, indirectly solicits claims for
15 collection.

16
17 3.25. Defendant Asset Acceptance, LLC, collects or attempts to collect debts
18 or claims that were originally owed to another person.

19 3.26. Defendant Asset Acceptance, LLC, obtained any right to collect the
20 Hjelm obligation after that alleged obligation was in default.

21
22 3.27. Defendant Asset Acceptance, LLC is not licensed as a “collection
23 agency” as required by Washington law.

24 3.28. Defendant Asset Acceptance, LLC is a Delaware Corporation.
25

IV. PARTIES

1 4.1. Now, and at all relevant times, Plaintiff Mary Hjelm was a resident of the
2 State of Washington residing within the territorial jurisdiction area of the
3 United States District Court for the Eastern District of Washington.

4
5 4.2. Defendant Asset Acceptance, LLC, is a limited liability corporation
6 engaged in the business of collecting debts within the State of
7 Washington; which debts were originally owed to another.
8

9 4.3. Defendant Asset Acceptance, LLC is neither a Washington corporation.

10 4.4. Defendant Asset Acceptance, LLC has not been qualified to do business
11 in Washington as a foreign corporation.
12

13 4.5. The principle purpose of Defendant Asset Acceptance, LLC's business
14 activities within the jurisdiction of this court is the collection of debts
15 originally owed another using the mail and telephone.
16

17 4.6. Defendant Asset Acceptance, LLC, regularly attempts to collect debts
18 alleged to be due another or originally owed to another.

19 4.7. Defendant Asset Acceptance, LLC is doing business as a "debt
20 collector" in the Eastern District of Washington of the United States
21 District Court as defined by the FDCPA, 15 U.S.C. §1692a(6).
22

23 4.8. Defendant Isaac Hammer of Suttell & Associates, P.S., was the attorney
24 for Asset Acceptance, LLC in the State of Washington, Spokane Count
25 Superior Court Lawsuit against Plaintiff Hjelm.

1 4.9. Defendant Isaac Hammer of Suttell & Associates, P.S. approved the form
2 of the state court Complaint filed against Plaintiff Hjelm and the
3 collection system using that complaint.
4

5 4.10. Defendant Isaac Hammer is an employee of Suttell & Associates, P.S.
6 All acts done by Defendant Isaac Hammer were done on his behalf, on
7 behalf of the Hammer marital community, on behalf of Suttell &
8 Associates, P.S., and on behalf of Asset Acceptance, LLC.
9

10 4.11. All acts done by Suttell & Associates were done on its own behalf, and
11 on behalf of Asset Acceptance, LLC.
12

13 V. FACTS

14 5.1. On November 4, 2007, Defendants served Plaintiff Mary Hjelm the
15 Summons and Complaint in Washington State Superior Court, Spokane
16 County, Case No.: 08-2-01965-3 (Collection Lawsuit).
17

18 5.2. On April 24, 2008, Defendants filed the Collection Lawsuit against Mary
19 Hjelm in Washington State Superior Court, Spokane County.
20

21 5.3. The alleged debt which was the subject of the Collection Lawsuit was
22 from an alleged obligation to Home Depot, account
23 603532011486760702447490033100003900 ("Home Depo").
24

25 5.4. The Home Depot debt was for the purchase of a bath tub from Home
Depot.

1 5.5. The bathtub was a “good” as defined by the Revised Code of Washington
2 (“RCW”) § 62A.2-105.

3
4 5.6. The Washington UCC statute of limitations to bring an action for breach
5 of contract for the sale of a good is four years pursuant to RCW § 62A.2-
6 725.

7
8 5.7. The bathtub was a “good” as defined by S.D. Codified Laws (“SDCL”) §
9 57A-2-105.

10 5.8. The South Dakota UCC statute of limitations to bring an action for
11 breach of contract for the sale of a good is four years pursuant to SDCL §
12 57A-2-725.

13
14 5.9. No payment has been made to Home Depot sometime before November
15 11, 2003.

16
17 5.10. No charges were made on the Home Depot account since sometime
18 before November 11, 2003.

19 5.11. The Collection Lawsuit was an attempt to collect a debt that was time
20 barred by the Washington UCC statute of limitations.

21
22 5.12. The Collection Lawsuit was an attempt to collect a debt that was time
23 barred by the South Dakota UCC statute of limitations.

24 5.13. On Approximately July 19, 2007, Plaintiff Hjelm sent a dispute and
25 demand for verification pursuant to 15 USC § 1692g to Asset

1 Acceptance, LLC and Suttell & Associates, P.S. addressed to Suttell &
2 Associates, P.S.

3
4 5.14. On October 9, 2007, Suttell & Associates P.S. sent a letter in response to
5 the dispute and demand for verification with attachments which included
6 a statement of account generated by Suttell & Associates, P.S.

7
8 5.15. The statement of account, states the, "Date of Last Payment" was
9 "11/25/03."

10 5.16. Asset Acceptance, LLC is doing business in Washington including but
11 not limited to the solicitation of debts that were originated in Washington
12 that are in default in order to collect or to attempt to collect after
13 purchasing the debt.

14
15 5.17. Asset Acceptance, LLC is not licensed as a "collection agency" as
16 defined by Washington law. RCW 19.16.020(2).
17

18 VIII. VIOLATION OF THE FAIR DEBT
19 COLLECTION PRACTICES ACT

20 8.1 The debt collector Defendants, through their own acts, by and through
21 their agents and employees, and their policies and procedures, have
22 violated the FDCPA which has caused damage to Plaintiff.
23
24
25

1 8.2 The Defendants falsely represented the character, amount, and/or legal
2 status of the alleged debt, violating 15 USC § 1692e, 15 USC §
3 1692e(2)(A), and other provisions of the FDCPA..
4

5 8.3 The Defendants have threatened to take action that cannot legally be
6 taken, violating 15 USC § 1692e, 15 USC § 1692e(5) and other
7 provisions of the FDCPA.
8

9 8.4 The debt collector defendants made misleading and deceptive statements
10 in the collection of a debt in violation of 15 USC § 1692e.
11

12 8.5 Defendants misrepresented the date of default of the loan.
13

14 8.6 Defendants misrepresented the amount due.
15

16 8.7 Defendants misrepresented the amount due for interest and the amount
17 due for principal and failed to disclose that any amounts claimed were
18 due for any reason other than principle or interest including but not
19 limited to late fee, etc.

20 8.8 Defendants have used unfair or unconscionable means to collect or
21 attempt to collect a debt in violation of 15 USC § 1692f including but not
22 limited to 15 USC § 1692f(1).

23 8.9 Defendants attempted to collect a debt barred by the UCC statute of
24 limitations for a sale of goods.
25

1 8.10 Commencing or threatening to commence a lawsuit to collect a debt
2 which is barred by the statute of limitations is a violation of the FDCPA,
3 15 USC § 1692f(1).
4

5 8.11 Defendants have collected or attempted to collect collection charges,
6 interest and attorney fees in excess of the collection charges, interest and
7 attorney fees in violation of 15 USC § 1692f, 15 USC § 1692f(1), and
8 other provisions of the FDCPA.
9

10 8.12 The attempt to collect or collection of such an amount is neither
11 expressly authorized by an agreement creating the debt nor permitted by
12 law, therefore in violation of 15 USC § 1692f, 15 USC § 1692f(1), and
13 other provisions of the FDCPA.
14

15 8.13 Defendant violated 15 USC 1692g by failing to properly verify the
16 alleged debt and/or taking collection action without verifying or
17 adequately addressing the dispute made by the consumer.
18

19 8.14 The Defendants violation of the FDCPA has caused actual Damages to
20 the Plaintiff.
21

22 IX. VIOLATION OF THE WASHINGTON
23 COLLECTION AGENCY ACT

24 9.1 Defendant Asset Acceptance, LLC is a “collection agency” as defined by
25 RCW 19.16.100(2).

1 9.2 Defendant Asset Acceptance, LLC and its defendant employees are in
2 violation of RCW 19.16.250(14), 19.16.250(15), 19.16.250(18), and
3 other sections of RCW 19.16. including but not limited to RCW
4 19.16.250.
5

6 9.3 Asset Acceptance, LLC is not properly licensed as a collection agency as
7 required by the WCAA.
8

9 9.4 Asset Acceptance, LLC is collecting debts in Washington without a
10 license in violation of the WCAA.
11

12 9.5 Asset Acceptance, LLC is filing lawsuits without being a valid
13 Washington corporation.
14

15 9.6 Asset Acceptance, LLC is filing lawsuits without being a Qualified
16 Foreign Corporation.
17

18 9.7 Asset Acceptance, LLC violated RCW 19.16.250(8) by failing to give or
19 send to any debtor or cause to be given or sent to any debtor, any notice,
20 letter, message, or form which represents or implies that a claim exists
21 unless it shall indicate in clear and legible type:

22 9.7.1 (a) The name of the licensee and the city, street, and number at
23 which he is licensed to do business;

24 9.7.2 (b) The name of the original creditor to whom the debtor owed the
25 claim if such name is known to the licensee or employee:

1 PROVIDED, That upon written request of the debtor, the licensee
2 shall make a reasonable effort to obtain the name of such person
3 and provide this name to the debtor;
4

5 9.7.3 (c) If the notice, letter, message, or form is the first notice to the
6 debtor or if the licensee is attempting to collect a different amount
7 than indicated in his or its first notice to the debtor, an itemization
8 of the claim asserted must be made including:
9

10 9.7.3.1 (i) Amount owing on the original obligation at the time it was
11 received by the licensee for collection or by assignment;
12

13 9.7.3.2 (ii) Interest or service charge, collection costs, or late payment
14 charges, if any, added to the original obligation by the original
15 creditor, customer or assignor before it was received by the
16 licensee for collection, if such information is known by the
17 licensee or employee: PROVIDED, That upon written request
18 of the debtor, the licensee shall make a reasonable effort to
19 obtain information on such items and provide this information
20 to the debtor;
21

22 9.7.3.3 (iii) Interest or service charge, if any, added by the licensee or
23 customer or assignor after the obligation was received by the
24 licensee for collection;
25

1 9.7.3.4 (iv) Collection costs, if any, that the licensee is attempting to
2 collect;

3 9.7.3.5 (v) Attorneys' fees, if any, that the licensee is attempting to
4 collect on his or its behalf or on the behalf of a customer or
5 assignor;

6 9.7.3.6 (vi) Any other charge or fee that the licensee is attempting to
7 collect on his or its own behalf or on the behalf of a customer or
8 assignor.
9

10 9.8 Defendant Asset Acceptance, LLC, violated RCW 19.16.250(14)(15)
11 and (18) by misrepresenting the amount due and attempting to collect
12 amounts in excess of that allowed by law.
13

14 9.9 Defendant Asset Acceptance, LLC, violated RCW 19.16.250, by
15 causing a lawsuit to be filed for a time barred debt.
16
17

18 X. VIOLATION OF THE
19 CONSUMER PROTECTION ACT

20 10.1 Defendant Asset Acceptance, LLC violated the Washington Consumer
21 Protection Act (WCPA).
22

23 10.2 Defendant Asset Acceptance, LLC's violation of the Washington State
24 Collection Agency Act is a per se violation of the Washington State
25 Consumer Protection Act. (RCW 19.16.440).

1 10.3 Defendant Asset Acceptance, LLC's violation of the Washington State
2 Collection Agency Act (WCAA) prohibited practices section, RCW
3 19.16.250 or licensing sections is an unfair act or practice and/or an
4 unfair method of competition in the conduct of trade or commerce.
5

6 10.4 Defendant Asset Acceptance, LLC's violation of the Washington State
7 Collection Agency Act (WCAA) prohibited practices section, RCW
8 19.16.250 or licensing sections affects the public interest in violation of
9 the Washington State Consumer Protection Act. (RCW 19.16.440).
10

11 10.5 Defendant Asset Acceptance, LLC has violated the WCCA including but
12 not limited to the prohibited practices section (RCW 19.16.250).
13

14 10.6 Defendant Asset Acceptance, LLC has violated the WCCA including but
15 not limited to failing to obtain and maintain a license as required by
16 RCW 19.16.110.
17

18 10.7 Defendant Asset Acceptance, LLC has violated the Washington
19 Administrative Code governing the actions of collection agencies.
20

21 10.8 The business of collection agencies, as well as all acts and practices of
22 collection agencies, debt collectors, are subject to the Consumer
23 Protection Act, RCW 19.86 and subsequent sections.
24
25

1 10.9 The Consumer Protection Act of the State of Washington requires that all
2 collection agencies, their agents, and debt collectors abstain from unfair
3 or deceptive practices or acts and unfair methods of competition.
4

5 10.10 Defendant Asset Acceptance, LLC, personally and/or by and through
6 their agents and employees, policies and procedures, have engaged in
7 deceptive acts and practices, unfair acts and practices, and unfair
8 methods of competition that have caused injury to the plaintiffs.
9

10 10.11 Defendant Asset Acceptance, LLC has engaged in unfair and deceptive
11 acts and practices in attempting to collect an alleged debt from the
12 plaintiff.
13

14 10.12 Defendant Asset Acceptance, LLC has is in the business of debt
15 collection in trade or commerce.
16

17 10.13 Unlawful and Unfair Debt Collections is against public interest.

18 10.14 Defendant Asset Acceptance, LLC's actions were the direct cause of
19 injury to plaintiff's property.
20

21 10.15 The violations have harmed and unless enjoined will continue to harm
22 the public interest by causing Plaintiff to pay collection charges that are
23 unfair deceptive, unlawful, and an unfair method of competition.
24
25

1 10.16 Defendants Suttell & Associates P.S. and Isaac Hammer have
2 engaged in unfair and deceptive acts and practices in attempting to
3 collect an alleged debt from the plaintiff.
4

5 10.17 Defendants Suttell & Associates P.S. and Isaac Hammer are in the
6 business of debt collection in trade or commerce.
7

8 10.18 Unlawful and Unfair Debt Collections is against public interest.
9

10 10.19 Defendants Suttell & Associates P.S. and Isaac Hammer's actions
11 were the direct cause of injury to plaintiff's property.
12

13 10.20 The violations have harmed and unless enjoined will continue to harm
14 the public interest by causing Plaintiff to pay collection charges that
15 are unfair deceptive, unlawful, and an unfair method of competition.
16

17 10.21 Defendant Suttell & Associates, P.S. is a for profit corporation.
18

19 10.22 The entrepreneurial acts and practices of an attorney are subject to the
20 Washington Consumer Protection Act, RCW 19.16 and subsequent
21 sections.
22

23 10.23 The Washington Consumer Protection Act requires that all attorney's
24 engaging in the entrepreneurial acts and practices abstain from unfair
25 or deceptive practices or and unfair methods of competition.
26

27 10.24 Defendants Suttell & Associates P.S. and Isaac Hammer use unfair
28 and deceptive practices to create unfair and deceptive charges as legal
29

fees, to collect unfair and deceptive fees, to bill unfair and deceptive fees, to determine unfair and deceptive fees.

10.25 Defendants Suttell & Associates P.S. and Isaac Hammer use unfair and deceptive acts and practices to obtain and retain clients.

10.26 The violations of the WCPA against Defendants Suttell & Associates P.S. and Isaac Hammer are based on entrepreneurial aspects of the practice of law.

XI. DEMAND

WHEREFORE, plaintiff demands judgment as follows:

11.1 Actual damages;

11.2 Statutory damages pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(2).

11.3 Costs and reasonable attorney's fees pursuant to the FDCPA, 15 U.S.C. §1692k(a)(3);

11.4 Costs and reasonable attorney's fees pursuant to the Washington Consumer Protection Act, RCW 19.86;

11.5 Treble damages pursuant to the Washington Consumer Protection Act, RCW 19.86;

11.6 Declaratory Judgment that defendants' practices violate the Fair Debt Collection Practices Act and/or the Washington Consumer Protection Act; and/or the Washington Collection Agency Act.

1 11.7 Disgorgement pursuant to RCW 19.16.450 of all interest, service
2 charges, attorneys' fees, collection costs, delinquency charge or any other
3 fees or charges otherwise legally chargeable to the debtor on such claim,
4 collected by defendants;
5

6 11.8 Injunction prohibiting defendants from attempting to collect collection
7 fees, interest, attorney fees, and other charges unless allowed by law.
8

9 11.9 Injunction prohibiting defendants from attempting to collect time barred
10 debt by threatening or instituting litigation.
11

12 11.10 For such other and further relief as may be just and proper.
13

14 DATED this 23rd day of April, 2009.
15

16 *Michael D. Kinkley P.S.*
17

18 /s Michael D. Kinkley
19 Michael D. Kinkley
20 WSBA # 11624
21 Attorney for Plaintiff
22
23
24
25